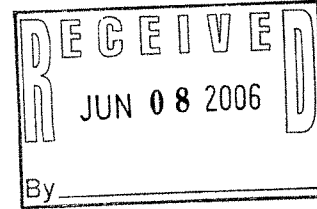


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Attorney for Plaintiffs Dan L. Whitney,
Janet R. Hadley, Margaret Kornow-Brown,
Eric Brelle

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAN L. WHITNEY, JANET R. HADLEY,)	No. C0405232
MARGARET A. KORNOW-BROWN, ERIC)	
BRELLE,)	STIPULATED
)	PROTECTIVE
Plaintiffs,)	ORDER
v.)	
)	
CHARLES WURTZ, VERISCAPE, INC.,)	
RENEE TADLOCK, REGINA RYGELIS,)	
WILL ARNTZ, SAM JACOBS, GARY)	
BERKOWITZ, BRIAN ROE, and)	
DOES 1 TO 20, inclusive,)	
)	
Defendants.)	
)	
<u>AND RELATED CROSS-ACTION</u>)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting

1 this litigation would be warranted. Accordingly, the parties
2 hereby stipulate to and petition the court to enter the
3 following Stipulated Protective Order. The parties acknowledge
4 that this Order does not confer blanket protections on all
5 disclosures or responses to discovery and that the protection
6 it affords extends only to the limited information or
7 items that are entitled under the applicable legal principles
8 to treatment as confidential. The parties further acknowledge,
9 as set forth in Section 10, below, that this Stipulated
10 Protective Order creates no entitlement to file confidential
11 information under seal; Civil Local Rule 79-5 sets forth the
12 procedures that must be followed and reflects the standards
13 that will be applied when a party seeks permission from the
14 court to file material under seal.
15

16 **2. DEFINITIONS**

17
18
19 2.1. Party: any party to this action, including all of its
20 officers, directors, employees, consultants, retained experts,
21 and outside counsel (and their support staff).
22

23 2.2. Disclosure or Discovery Material: all items or
24 information, regardless of the medium or manner generated,
25 stored, or maintained (including, among other things,
26 testimony, transcripts, or tangible things) that are produced
27 or generated in disclosures or responses to discovery in this
28

1 matter.

2
3 2.3. "Confidential" Information or Items: information
4 (regardless of how generated, stored or maintained) or tangible
5 things that qualify for protection under standards developed
6 under F.R.Civ.P. 26(c).

7
8 2.4. "Highly Confidential - Attorneys' Eyes Only"
9 Information or Items: extremely sensitive "Confidential
10 Information or Items" whose disclosure to another Party or
11 nonparty would create a substantial risk of serious injury that
12 could not be avoided by less restrictive means.

13
14 2.5. Receiving Party: a Party that receives Disclosure or
15 Discovery Material from a Producing Party.

16
17 2.6. Producing Party: a Party or non-party that produces
18 Disclosure or Discovery Material in this action.

19
20 2.7. Designating Party: a Party or non-party that
21 designates information or items that it produces in disclosures
22 or in responses to discovery as "Confidential" or "Highly
23 Confidential-Attorneys' Eyes Only."

1 2.8. Protected Material: any Disclosure or Discovery
2 Material that is designated as "Confidential" or as "Highly
3 Confidential - Attorneys' Eyes Only."

4
5 2.9. Outside Counsel: attorneys who are not employees of a
6 Party but who are retained to represent or advise a Party in
7 this action.

8
9 2.10. House Counsel: attorneys who are employees of a
10 Party.

11
12 2.11 Counsel (without qualifier): Outside Counsel an
13 House Counsel (as well as their support staffs).

14
15 2.12. Expert: a person with specialized knowledge or
16 experience in a matter pertinent to the litigation who has been
17 retained by a Party or its counsel to serve as an expert
18 witness or as a consultant in this action and who is not a past
19 or a current employee of a Party or of a competitor of a
20 Party's and who, at the time of retention, is not anticipated
21 to become an employee of a Party or a competitor of a Party's.
22 This definition includes a professional jury or trial
23 consultant retained in connection with this litigation.

24
25 2.13 Professional Vendors: persons or entities that
26 provide litigation support services (e.g., photocopying;
27

1 videotaping; translating; preparing exhibits or demonstrations;
2 organizing, storing, retrieving data in any form or medium;
3 etc.) and their employees and subcontractors.
4

5 3. SCOPE
6

7
8 The protections conferred by this Stipulation and Order
9 cover not only Protected Material (as defined above), but also
10 any information copied or extracted therefrom, as well as all
11 copies, excerpts, summaries, or compilations thereof, plus
12 testimony, conversations, or presentations by
13 parties or counsel to or in court or in other settings that
14 might reveal Protected Material.
15

16 4. DURATION
17

18 Even after the termination of this litigation, the
19 confidentiality obligations imposed by this Order shall remain
20 in effect until a Designating Party agrees otherwise in writing
21 or a court order otherwise directs.
22

23 5. DESIGNATING PROTECTED MATERIAL
24

25 5.1. Exercise of Restraint and Care in Designating
26 Material for Protection. Each Party or non-party that
27
28

1 designates information or items for protection under this Order
2 must take care to limit any such designation to specific
3 material that qualifies under the appropriate standards. A
4 Designating Party must take care to designate for protection
5 only those parts of material, documents, items, or oral or
6 written communications that qualify - so that other portions of
7 the material, documents, items, or communications for which
8 protection is not warranted are not swept unjustifiably within
9 the ambit of this Order.
10

11 Mass, indiscriminate, or routinized designations are
12 prohibited. Designations that are shown to be clearly
13 unjustified, or that have been made for an improper purpose
14 (e.g., to unnecessarily encumber or retard the case development
15 process, or to impose unnecessary expenses and burdens on other
16 parties), expose the Designating Party to sanctions.
17

18 If it comes to a Party's or a non-party's attention that
19 information or items that it designated for protection do not
20 qualify for protection at all, or do not qualify for the level
21 of protection initially asserted, that Party or non-party must
22 promptly notify all other parties that it is withdrawing the
23 mistaken designation.
24
25
26
27
28

1 5.2. Manner and Timing of Designations. Except as
2 otherwise provided in this Order (see, e.g., second paragraph
3 of section 5.2(a), below), or as otherwise stipulated or
4 ordered, material that qualifies for protection under this
5 Order must be clearly so designated before the material is
6 disclosed or produced.
7

8 Designation in conformity with this Order requires:
9

10 (a) for information in documentary form (apart from
11 transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix the legend
13 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
14 at the top of each page that contains protected material. If
15 only a portion or portions of the material on a page qualifies
16 for protection, the Producing Party also must clearly identify
17 the protected portion(s) (e.g., by making appropriate markings
18 in the margins) and must specify, for each portion, the level
19 of protection being asserted (either "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL - ATTORNEYS' EYES ONLY").
21

22 A Party or non-party that makes original documents or
23 materials available for inspection need not designate them for
24 protection until after the inspecting Party has indicated which
25 material it would like copied and produced. During the
26 inspection and before the designation, all of the material made
27
28

1 available for inspection shall be deemed "HIGHLY CONFIDENTIAL -
2 ATTORNEYS' EYES ONLY." After the inspecting Party has
3 identified the documents it wants copied and produced, the
4 Producing Party must determine which documents, or portions
5 thereof, qualify for protection under this Order, then, before
6 producing the specified documents, the Producing Party must
7 affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL - ATTORNEYS' EYES ONLY") at the top of each page
9 that contains Protected Material. If only a portion or portions
10 of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the
13 margins) and must specify, for each portion, the level of
14 protection being asserted (either "CONFIDENTIAL" or "HIGHLY
15 CONFIDENTIAL - ATTORNEYS' EYES ONLY").
16

17 (b) for testimony given in deposition or in other pretrial
18 or trial proceedings, that the Party or non-party offering or
19 sponsoring the testimony identify on the record, before the
20 close of the deposition, hearing, or other proceeding, all
21 protected testimony, and further specify any
22 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL
23 - ATTORNEYS' EYES ONLY." When it is impractical to identify
24 separately each portion of testimony that is entitled to
25 protection, and when it appears that substantial portions of
26 the testimony may qualify for protection, the Party or non-
27

1 party that sponsors, offers, or gives the testimony may invoke
2 on the record (before the deposition or proceeding is
3 concluded) a right to have up to 20 days to identify the
4 specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being
6 asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
7 EYES ONLY"). Only those portions of the testimony that are
8 appropriately designated for protection within the 20
9 days shall be covered by the provisions of this Stipulated
10 Protective Order.
11

12 Transcript pages containing Protected Material must be
13 separately bound by the court reporter, who must affix to the
14 top of each such page the legend "CONFIDENTIAL" or "HIGHLY
15 CONFIDENTIAL - ATTORNEYS' EYES ONLY," as instructed by the
16 Party or nonparty offering or sponsoring the witness or
17 presenting the testimony.
18

19 (c) for information produced in some form other than
20 documentary, and for any other tangible items, that the
21 Producing Party affix in a prominent place on the exterior of
22 the container or containers in which the information or item is
23 stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
24 ATTORNEYS' EYES ONLY." If only portions of the information
25 or item warrant protection, the Producing Party, to the extent
26 practicable, shall identify the protected portions, specifying
27
28

1 whether they qualify as "Confidential" or as "Highly
2 Confidential - Attorneys' Eyes Only."
3

4 5.3. Inadvertent Failures to Designate. If timely
5 corrected, an inadvertent failure to designate qualified
6 information or items as "Confidential" or "Highly Confidential
7 - Attorneys' Eyes Only" does not, standing alone, waive the
8 Designating Party's right to secure protection under this
9 Order for such material. If material is appropriately
10 designated as "Confidential" or "Highly Confidential -
11 Attorneys' Eyes Only" after the material was initially
12 produced, the Receiving Party, on timely notification of the
13 designation, must make reasonable efforts to assure that the
14 material is treated in accordance with the provisions of this
15 Order.
16

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
18

19
20 6.1. Timing of Challenges. Unless a prompt challenge to a
21 Designating Party's confidentiality designation is necessary to
22 avoid foreseeable substantial unfairness, unnecessary
23 economic burdens, or a later significant disruption or delay of
24 the litigation, a Party does not waive its right to challenge a
25 confidentiality designation by electing not to mount a
26 challenge promptly after the original designation is disclosed.
27

1 6.2. Meet and Confer. A Party that elects to initiate a
2 challenge to a Designating Party's confidentiality designation
3 must do so in good faith and must begin the process by
4 conferring directly (in voice to voice dialogue; other forms of
5 communication are not sufficient) with counsel for the
6 Designating Party. In conferring, the challenging Party must
7 explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party
9 an opportunity to review the designated material, to reconsider
10 the circumstances, and, if no change in designation is
11 offered, to explain the basis for the chosen designation. A
12 challenging Party may proceed to the next stage of the
13 challenge process only if it has engaged in this meet and
14 confer process first.

15
16 6.3. Judicial Intervention. A Party that elects to press
17 a challenge to a confidentiality designation after considering
18 the justification offered by the Designating Party may file and
19 serve a motion under Civil Local Rule 7 (and in compliance with
20 Civil Local Rule 79-5, if applicable) that identifies the
21 challenged material and sets forth in detail the basis for the
22 challenge. Each such motion must be accompanied by a competent
23 declaration that affirms that the movant has complied with the
24 meet and confer requirements imposed in the preceding paragraph
25 and that sets forth with specificity the justification for the
26 confidentiality designation that was given by the Designating
27

1 Party in the meet and confer dialogue.
2

3 The burden of persuasion in any such challenge proceeding
4 shall be on the Designating Party. Until the court rules on
5 the challenge, all parties shall continue to afford the
6 material in question the level of protection to which it is
7 entitled under the Producing Party's designation.
8

9
10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11
12 7.1. Basic Principles. A Receiving Party may use
13 Protected Material that is disclosed or produced by another
14 Party or by a non-party in connection with this case only for
15 prosecuting, defending, or attempting to settle this
16 litigation. Such Protected Material may be disclosed only to
17 the categories of persons and under the conditions described in
18 this Order. When the litigation has been terminated, a
19 Receiving Party must comply with the provisions of section 11,
20 below (FINAL DISPOSITION).
21

22 Protected Material must be stored and maintained by a
23 Receiving Party at a location and in a secure manner that
24 ensures that access is limited to the persons authorized under
25 this Order.
26
27
28

1 7.2. Disclosure of "CONFIDENTIAL" Information or Items.

2 Unless otherwise ordered by the court or permitted in writing
3 by the Designating Party, a Receiving Party may disclose
4 any information or item designated CONFIDENTIAL only to:
5

6 (a) the Receiving Party's Outside Counsel of record in
7 this action, as well as employees of said Counsel to whom it is
8 reasonably necessary to disclose the information for this
9 litigation and who have signed the "Agreement to Be Bound by
10 Protective Order" that is attached hereto as Exhibit A;
11

12 (b) the officers, directors, and employees (including
13 House Counsel) of the Receiving Party to whom disclosure is
14 reasonably necessary for this litigation and who have signed
15 the "Agreement to Be Bound by Protective Order" (Exhibit A);
16

17 (c) experts (as defined in this Order) of the Receiving
18 Party to whom disclosure is reasonably necessary for this
19 litigation and who have signed the "Agreement to Be
20 Bound by Protective Order" (Exhibit A);
21

22 (d) the Court and its personnel;
23

24 (e) court reporters, their staffs, and professional
25 vendors to whom disclosure is reasonably necessary for this
26 litigation and who have signed the "Agreement to Be Bound by
27

1 Protective Order" (Exhibit A);

2
3 (f) during their depositions, witnesses in the action to
4 whom disclosure is reasonably necessary and who have signed the
5 "Agreement to Be Bound by Protective Order" (Exhibit A). Pages
6 of transcribed deposition testimony or exhibits to depositions
7 that reveal Protected Material must be separately bound by the
8 court reporter and may not be disclosed to anyone except as
9 permitted under this Stipulated Protective Order.

10
11 (g) the author of the document or the original source of
12 the information.

13
14 7.3. Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
15 ONLY" Information or Items. Unless otherwise ordered by the
16 court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

19
20 (a) the Receiving Party's Outside Counsel of record in
21 this action, as well as employees of said Counsel to whom it is
22 reasonably necessary to disclose the information for this
23 litigation and who have signed the "Agreement to Be Bound by
24 Protective Order" that is attached hereto as Exhibit A;

1 (b) Experts (as defined in this Order) (1) to whom
2 disclosure is reasonably necessary for this litigation, (2) who
3 have signed the "Agreement to Be Bound by Protective Order"
4 (Exhibit A).

5
6 (c) the Court and its personnel;

7
8 (d) court reporters, their staffs, and professional
9 vendors to whom disclosure is reasonably necessary for this
10 litigation and who have signed the "Agreement to Be Bound by
11 Protective Order" (Exhibit A); and

12 (e) the author of the document or the original source of
13 the information.
14

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
16 LITIGATION
17

18
19 If a Receiving Party is served with a subpoena or an order
20 issued in other litigation that would compel disclosure of any
21 information or items designated in this action as
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY,"
23 the Receiving Party must so notify the Designating Party, in
24 writing (by fax, if possible) immediately and in no event more
25 than three court days after receiving the subpoena or order.
26 Such notification must include a copy of the subpoena or court
27 order.
28

1 The Receiving Party also must immediately inform in
2 writing the Party who caused the subpoena or order to issue in
3 the other litigation that some or all the material covered by
4 the subpoena or order is the subject of this Protective Order.
5 In addition, the Receiving Party must deliver a copy of this
6 Stipulated Protective Order promptly to the Party in the other
7 action that caused the subpoena or order to issue.
8

9 The purpose of imposing these duties is to alert the
10 interested parties to the existence of this Protective Order
11 and to afford the Designating Party in this case an opportunity
12 to try to protect its confidentiality interests in the court
13 from which the subpoena or order issued. The Designating Party
14 shall bear the burdens and the expenses of seeking protection
15 in that court of its confidential material - and nothing in
16 these provisions should be construed as authorizing or
17 encouraging a Receiving Party in this action to disobey a
18 lawful directive from another court.
19

20
21 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**
22

23 If a Receiving Party learns that, by inadvertence or
24 otherwise, it has disclosed Protected Material to any person or
25 in any circumstance not authorized under this Stipulated
26 Protective Order, the Receiving Party must immediately (a)
27 notify in writing the Designating Party of the unauthorized
28

1 disclosures, (b) use its best efforts to retrieve all copies of
2 the Protected Material, (c) inform the person or persons to
3 whom unauthorized disclosures were made of all the terms of
4 this Order, and (d) request such person or persons to execute
5 the "Acknowledgment and Agreement to Be Bound" that is attached
6 hereto as Exhibit A.

7
8 **10. FILING PROTECTED MATERIAL**

9
10 Without written permission from the Designating Party or a
11 court order secured after appropriate notice to all interested
12 persons, a Party may not file in the public record in this
13 action any Protected Material. A Party that seeks to file
14 under seal any Protected Material must comply with Civil Local
15 Rule 79-5.
16

17
18 **11. FINAL DISPOSITION**

19
20 Unless otherwise ordered or agreed in writing by the
21 Producing Party, within sixty days after the final termination
22 of this action, each Receiving Party must return all Protected
23 Material to the Producing Party. As used in this subdivision,
24 "all Protected Material" includes all copies, abstracts,
25 compilations, summaries or any other form of reproducing or
26 capturing any of the Protected Material. With permission in
27 writing from the Designating Party, the Receiving Party may
28

1 destroy some or all of the Protected Material instead of
2 returning it. Whether the Protected Material is returned or
3 destroyed, the Receiving Party must submit a written
4 certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the sixty day
6 deadline that identifies (by category, where appropriate) all
7 the Protected Material that was returned or destroyed and that
8 affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or other forms of
10 reproducing or capturing any of the Protected Material.
11 Notwithstanding this provision, Counsel are entitled to retain
12 an archival copy of all pleadings, motion papers, transcripts,
13 legal memoranda, correspondence or attorney work product, even
14 if such materials contain Protected Material. Any such
15 archival copies that contain or constitute Protected
16 Material remain subject to this Protective Order as set forth
17 in Section 4. (DURATION), above.
18

19
20 **12. MISCELLANEOUS**

21
22 12.1. Right to Further Relief. Nothing in this Order
23 abridges the right of any person to seek its modification by
24 the Court in the future.

25
26 12.2. Right to Assert Other Objections. By stipulating to
27 the entry of this Protective Order no Party waives any right it
28

otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: ~~6/2/06~~ ^{DRB} 3/21/06 DRB
David R. Beck,
Attorney for Plaintiffs

DATED: 3-21-06 Brian Baker
Brian Baker,
Attorney for Defendants
Charles Wurtz, Veriscape,
Regina Rygelis, Gary
Berkowitz and Brian Roe

DATED: _____
Robert Burmeister,
Attorney for Defendants
Charles Wurtz, Veriscape,
Regina Rygelis, Gary
Berkowitz and Brian Roe

DATED: 6/9/06 Jeff Kravitz
Jeffrey Kravitz,
Attorney for Defendants
Will Arntz and Sam Jacob

DATED: June 8, 2006 Sharon Kirsch
Sharon Kirsch,
Attorney for Defendant
Renee Tadlock

Jun-13-2006 01:56pm From-

T-030 P.020/023 F-272

otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATE:

^{DRB}
~~6/12/06~~ 3/21/06

DRB
David R. Beck,
Attorney for Plaintiff:

DATE:

3-21-06

Brian Baker
Brian Baker,
Attorney for Defendant:
Charles Wurtz, Veriscape,
Regina Rygelis, Gary
Berkowitz and Brian Rot:

DATE:

6-13-06

Robert Burmeister
Robert Burmeister,
Attorney for Defendant:
Charles Wurtz, Veriscape,
Regina Rygelis, Gary
Berkowitz and Brian Rot:

DATE:

6/9/06

Jeffrey Kravitz
Jeffrey Kravitz,
Attorney for Defendant:
Will Arntz and Sam Jacob

DATED:


June 8, 2006

Sharon Kirsch
Sharon Kirsch,
Attorney for Defendant
Renee Tadlock

Jun-13-2006 03:35pm From-

T-032 P.021/023 F-274

1 DATE: _____



John A. Beranbaum,
Attorney for Cross-Defendant
Richard Dodd

4 DATE: _____

Mark A. White,
Attorney for Cross-Defendant
Richard Dodd

8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

10 DATE: June 29, 2006


Judge of the United States
District Court

1 DATED: _____

2 John A. Beranbaum,
3 Attorney for Cross-Defendant
Richard Dodd

4 DATED: 6/13/06

Mark White (by COA)
5 Mark A. White,
6 Attorney for Cross-Defendant
Richard Dodd

7
8 PURSUANT TO STIPULATION, IT IS SO ORDERED.

9
10 DATED: _____

11 Judge of the United States
12 District Court

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2006, in the case of **Whitney, et al. v. Wurtz, et al.**, Case No. **C0405232-pvt.** I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

1 I hereby appoint _____ [print or type full
2 name] of _____
3 _____ [print
4 or type full address and telephone number] as my California agent
5 for service of process in connection with this action or any
6 proceedings related to enforcement of this Stipulated Protective
7 Order.
8

9 Dated: _____
10

11 City and State where sworn and signed:
12
13 _____
14

15 Printed name: _____
16

17 Signature: _____
18
19
20
21
22
23
24
25
26
27
28